

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Birach Broadcasting Corporation)	File No.: EB-FIELDNER-22-00034319
Licensee of AM Station WGOP)	Facility ID: 5347
Owner of Antenna Structure 1037587)	FRN: 0003766847
)	
Pocomoke City, Maryland)	
)	
)	

NOTICE OF VIOLATION

Released: September 25, 2023

By the Regional Director, Region One, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to section 1.89 of the Federal Communications Commission's (FCC or Commission) rules¹ to Birach Broadcasting Corporation (Birach), licensee of radio station WGOP-AM and owner of antenna structure number ASR 1037587 (Antenna Structure) in Pocomoke, Maryland. Pursuant to section 1.89(a) of the Commission's rules, issuance of this Notice does not preclude the FCC's Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violations noted herein.²

2. On September 30, 2022 and December 28, 2022, an agent of the Enforcement Bureau's Columbia Office (Columbia Office) inspected the Antenna Structure located at 1637 Dun Swamp Road, Pocomoke City, Maryland³ and the coordinates 38-03-11 N 075-34-10 W and observed the following violations:

- a. 47 CFR § 17.23: "[E]ach antenna structure must be painted and lighted in accordance with any painting and lighting requirements prescribed on the antenna structure's registration, or in accordance with any other specifications provided by the Commission." The FCC's Antenna Structure Registration (ASR) database currently indicates that the Antenna Structure requires painting and red obstruction lighting during the nighttime that includes a top-level beacon and two mid-level steady burning side markers at the 1/3 and 2/3 levels in accordance with FCC Paragraphs 1, 3, 12, 21.⁴ At the time of inspection, which was after sunset and before dawn, an agent observed that the obstruction lighting was completely extinguished on the Antenna Structure.

¹ 47 CFR § 1.89.

² 47 CFR § 1.89(a).

³ As discussed further below, the address of the Antenna Structure is incorrectly listed in the ASR database as 114 West Main Street, Pocomoke City, Maryland. See *infra* para. 2(e).

⁴ See Antenna Painting & Lighting Specifications, *FCC Paragraphs*, <https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/antenna-painting-lighting> (last visited August 14, 2023).

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- b. 47 CFR § 17.50: “Antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility. Evaluation of the current paint status shall be made by using the FAA's [Federal Aviation Administration] In-Service Aviation Orange Tolerance Chart. This chart is based upon the color requirements contained in the National Bureau of Standards Report NBSIR 75–663, Color Requirements for the Marking of Obstructions.” At the time of inspection, an agent observed that the paint on the Antenna Structure was severely faded and flaking and did not maintain good visibility.
- c. 47 CFR § 17.48(a): “The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part . . . [s]hall report immediately to the FAA, by means acceptable to the FAA, any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes . . .” On September 21, 2022, when the Commission’s Operation Center reported the antenna tower light outage to the FAA and initiated the issuance of a Notice to Air Missions (NOTAM), the FAA advised that there had been no other current light outage reports and/or NOTAM issued for the Antenna Structure. On December 28, 2022, and July 26, 2023, the Columbia Office contacted the FAA to request an extension of the NOTAM. The FAA advised that Birach had still taken no action to report the outage to the FAA.⁵
- d. 47 CFR § 17.56: “Replacing or repairing of lights, automatic indicators or automatic control or alarm systems shall be accomplished as soon as practicable.” According to a complaint, a light outage had occurred on the Antenna Structure since at least September 20, 2022. On October 27, 2023, an FCC agent attempted to contact Birach about the lighting outage but received no response. On December 28, 2022 and February 2, 2023, FCC agents inspected the Antenna Structure and confirmed that the obstruction lighting was completely extinguished. As of February 2, 2023, Birach had not repaired the lighting on the Antenna Structure.
- e. 47 C.F.R. § 17.4(b): “[E]ach owner of an antenna structure described in paragraph (a) of this section must electronically file FCC Form 854 with the Commission . . .” Form 854 includes the street address or geographic location of the antenna structure. The information listed in the ASR database for antenna structure number ASR 1037587 incorrectly lists the address of the Antenna Structure as 114 West Main Street, Pocomoke City, Maryland. According to property records, the Antenna Structure is located at 1637 Dun Swamp Road, Pocomoke City, Maryland 21851.

3. Pursuant to section 403 of the Communications Act 1934, as amended (Act), and section 1.89 of the Commission’s rules, we seek additional information concerning the violations and any remedial actions taken.⁶ Therefore, Birach must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including

⁵ On September 21, 2022, the FCC Operations Center contacted the Federal Aviation Administration (FAA) to notify them of the lighting outage and to request that a Notice of Airman (NOTAM) be issued. The FAA issued NOTAM # MD00/DCA 11/289. On December 28, 2022, the Columbia Office contacted the FAA to notify that the light outage was still occurring and requested an extension of the NOTAM. The FAA issued NOTAM # W4101/230. On July 26, 2023, the Columbia Office contacted the FAA to notify that the light outage was still occurring and request an extension of the NOTAM. The FAA issued NOTAM #W4107/617 which expires December 31, 2023.

⁶ 47 U.S.C. § 308(b); 47 CFR § 1.89.

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all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁷

4. In accordance with section 1.16 of the Commission's rules, we direct Birach to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Birach with personal knowledge of the representations provided in Birach's response, verifying the truth and accuracy of the information therein, and confirming that all of the information requested by this Notice which is in Birach's possession, custody, control, or knowledge has been produced.⁸ To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under title 18 of the U.S. Code.⁹

5. All replies and documentation sent in response to this Notice should be marked with the File Number, specified above, and mailed to the following address:

Federal Communications Commission
Enforcement Bureau Columbia Regional Office
9050 Junction Drive
Annapolis Junction, Maryland 20701

6. This Notice shall be sent to Birach Broadcasting Corporation at address of record and to Birach Broadcasting Corporation's counsel, John C. Trent, Esq. at 200 South Church Street, Woodstock, Virginia 22664.

7. The Privacy Act of 1974¹⁰ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director, Region One
Enforcement Bureau

⁷ 47 CFR § 1.89(c).

⁸ Section 1.16 of the Commission's rules provides that "[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'." 47 CFR § 1.16.

⁹ 18 U.S.C. §§ 1001, *et seq.*; *see also* 47 CFR § 1.17.

¹⁰ 5 U.S.C. § 552a(e)(3).